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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1878/2020 & CM APPL. 6603/2020**

RAJINDER KUMAR

..... Petitioner

Through Mr. Harish Malhotra, Sr. Advocate
with Mr. Tanuj Khurana and Mr.
Vikramjeet Singh, Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through Mr. Ripu Daman Bhardwaj, Standing
Counsel for R-1
Mr. P. Chidambram, Sr. Advocate
with Mr. Ankur Chawla, Mr. Jayant
Mohan, Mr. Gautam Dutta, Mr.
Meenakshi Chatterjee, Mr. Akshay
Sahni, Mr. Sanjay Dhawan, Mr.
Khowaja Siddiqui, Mr. Arun Sinha
and Mr. Akshay Ringe, Advocates for
DDCA

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **28.02.2020**

1. The petitioner, by the subject petition, seeks the following prayers: -

a) *Allow a writ of certiorari in favour of the petitioner and against respondents thereby seeking setting aside of the Impugned Annual Report and Statement of Accounts for the financial year 2018-2019, dated 13.12.2019, as issued by the Secretary of Respondent No. 2 Company, containing the*

notice for the Annual General Meeting, scheduled to be held on 29.12.2019 holding it to be against the provisions of the Companies Act, 2013 and articles of association; and/or

- b) Allow a writ of certiorari in favour of the petitioner and against Respondents thereby seeking setting aside of the Annual General Meeting, which took place illegally on 29.12.2019 and resolutions passed during the course of the illegally convened Annual General Meeting and also impugning the minutes of the said illegal meeting, containing the resolutions so passed against the mandate of the Companies Act, 2013.*

2. A preliminary objection has been raised by the respondents that a writ petition under Article 226 of the Constitution of India would not be maintainable in view of Sections 241, 242 read with Section 430 of the Companies Act, 2013 as the allegations of the petitioner are against an action taken purely of a corporate nature. It is contended that the petitioner has an equally efficacious alternative remedy available of approaching the National Company Law Tribunal (in short NCLT) in case the petitioner is aggrieved by any action taken by respondent no. 2.

3. Learned senior counsel for the petitioner submits that since petitioner does not satisfy the requirement of Section 244 (1) (a) & (b), a petition before NCLT, would not lie.

4. On the contrary, it is submitted by learned senior counsel for

the respondent that proviso to Section 244 (1) of the Companies Act, permits any person who does not satisfy the requirement of Section 244 (1) (a) & (b) to apply to NCLT for waiver of the conditions mentioned in clause to Section 244.

5. In view of the above, learned senior counsel for the petitioner seeks leave to withdraw the petition with liberty to approach the NCLT in terms of Section 244 of the Companies Act, 2013, while also reserving the right to take such remedies as may be available in law, in case NCLT refuses to grant waiver to the petitioner under sub-section 244 of the Companies Act, 2013.

6. In view of the above, the petition is dismissed as withdrawn with liberty as prayed for. All rights and contentions of the parties are reserved.

7. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

FEBRUARY 28, 2020

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